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SUBJECT: A NEW EU TREATY?: WHAT IT MEANS FOR US

¶1. (SBU) Summary. Given barely even odds six months ago, an agreement on institutional reform at the June 21-22 European summit has reached the realm of probability, with a strong Polish objection on voting weights as the most serious obstacle to agreement. The pressure to reach a deal is enormous for the substantial majority of member state governments who want to continue further integration. A failure to reach agreement will not "bring the EU down". The union has, after all, continued to function without reforms since the rejection of the constitutional treaty by voters in France and the Netherlands in 2005. The real problem is that a second highly visible failure to reform the institutions will land the Union in another, extended political funk. It is important to note, however, that a few member state governments may privately greet such a failure (and the resulting slow-down in EU consolidation) with a sense of relief.

¶2. (SBU) The good news for the EU is that there is a large majority aligned on most of the key issues. The outlines are now clear of a "simplified" treaty, shorn of the constitutional title but which nevertheless manages to incorporate almost all the original treaty's key elements. The joker in the deck, however, is that "most countries" is not good enough - all 27 must line up this week, leverage that the Poles in particular are eager to exploit.

¶3. (SBU) For the in-coming Portuguese presidency, the nightmare scenario is that the leaders, caught between Polish intransigence and an intense desire to get a deal, will settle for a nicely-packaged, but "false", consensus - one that kicks crucial political disputes into the inter-governmental conference (IGC) that will be charged with wrapping up the package by Christmas. The Portuguese have already hinted that they would refuse to open the IGC if they think this week's agreement is too thin. Nevertheless, our gut sense is that a weak deal is precisely the most probable scenario.

¶4. (U) This message will spell out the key issues being debated, their implications for EU decision-making and for U.S. policy interests, and (where we dare) a USEU prediction for the bookies. In the end, "success" will indeed be avoiding another round of extended self-reflection that could distract EU attention from working on the global issues that we, and they, need to address. End Summary.

Key Issues

¶5. (SBU) Issue: Voting representation in (most) EU decision-making

What's at stake: power, prestige, and sovereignty. Although EU decision-making is consensual by tradition, member state voting weights on "first pillar" (mainly economic

legislation) are loosely based on national population and size of economy. However, the 1999 Nice treaty deal gave Poland and Spain far more weight than their due, and Germany far less. The proposed new voting system would create a "double majority" voting system (55% of member states plus 65% of the total EU population). Although the last Polish government signed off on this reform in the Constitution draft, the present government has reneged and turned it into a red-line issue. The usual EU approach to recalcitrants is to buy them off, but our contacts admit that there are only limited options here. At best, sweeteners to the Poles could include a stronger provision allowing a minority of states to delay Council decisions; giving the Poles more weight in the Commission or the European Parliament; or adding a clause on EU energy solidarity.

USEU prediction: This is a deal-breaker question. With the stakes so high, pressure will be intense on Poland to fold. More likely, however, our contacts think that the Poles will force the question into further study, before or within the IGC.

Implications for the U.S.: The proposed change in the voting system would require an adjustment in our EU lobbying tactics, with Poland and Spain the biggest losers and Germany the clear winner.

16. (SBU) Issue: EU Charter of Fundamental Rights

What's at stake: incorporating the charter of fundamental rights into EU law could mean more rigid EU limitations regarding workers' rights. A red-line for the UK, this is the second-most contentious political issue and the leaders will not want to kick it down to the IGC. It is already a given that it will no longer be in the treaties themselves,

BRUSSELS 00002001 002 OF 004

but only referred to as an annex. The fight will be over how much legal value it is given.

USEU prediction: This will be largely a fight between the UK and the Latin member states, with the others in various stances in the middle. Well-placed Commission contacts predict they will end up with an ugly opt-out or a non-binding article in the treaty.

Implications for the U.S.: in some ways this is as much about political symbolism as its legal impact. The ECJ has already incorporated most of the rights and principles contained in the Charter as sources of law when applying "General Principles of Community Law" in its decisions, meaning this change would not greatly alter the status quo.

17. (SBU) Issue: Justice and Home Affairs (JHA) decision-making

What's at stake: the member state veto over justice and home affairs cooperation. This is one of the few truly substantive changes, as compared to the rest which focus mostly on process. The proposed change would move JHA issues out of their protective cover of required unanimity. Instead, sensitive judicial and law enforcement issues would become subject to majority decision-making as well as the involvement of the European Parliament and European Court of Justice.

USEU prediction: The proposal is likely to go ahead, but with a provision permitting a limited period of further discussion and, ultimately, an opt-out if any member state disagrees with the eventual majority decision. The UK and Ireland reportedly want such a provision to protect their legal systems, which differ from those in much of continental Europe.

Implications for U.S.-EU relations: would facilitate EU decision making on judicial and police cooperation. However, the additional powers of the European Parliament -- often

less like-minded with the U.S. than other EU institutions on JHA issues -- could move EU policy in a direction we don't like.

18. (SBU) Issue: creation of an EU "Foreign Minister"

What's at stake: boosting the EU's global role, effectiveness, and profile. The EU FM post will combine the existing policy functions of CFSP High Rep (Solana) with the role, budget, staff, and programs of RELEX Commissioner (Ferrero-Waldner). He/she would also control the new EU diplomatic service that will create for the first time a 3500-strong professional EU diplomatic corps (the majority of whom will be seconded from national services). In theory, this would create synergies, since the Council's foreign policy apparatus today has no ability to tell the Commission how to spend its development and foreign cooperation budget. The new EU FM would play a substantially bigger role in conducting CFSP/ESDP and take over external representation duties from the current rotating Presidency.

USEU prediction: the job will be created, as most member states agree to the double-hatting concept, but the name "foreign minister" will not survive - because the Brits, Dutch, and Czechs say it sounds too much like a national government position.

Implications for U.S.-EU relations: The new EU FM would be a substantial personality. Not only would he chair the Foreign Affairs Council, but more importantly, his control over the combined Council/Commission bureaucracy would give him enormous ability to shape the foreign policy agenda and to bring resources directly to bear on foreign policy issues. However, there is potential for confusion over lines of authority, as the Foreign Minister will report to the Commission President but derive his powers from the Council. In the long run - assuming the personalities mesh well - it should increase coherence of EU foreign and security policy, since the policymaker will also control the purse strings.

19. (SBU) Issue: EU permanent President of the European Council

What's at stake: Surprisingly little. The EU would still maintain rotating presidencies by member states for the specialized Council meetings, but the new permanent President would ensure top-level coordination and continuity in the EU's work (compared to the current six-month change). The term would be for two and a half years, renewable once.

USEU prediction: This proposal seems to inspire neither much enthusiasm nor opposition. Not as controversial as EU

BRUSSELS 00002001 003 OF 004

"foreign minister" so will probably happen.

Implications for U.S.-EU relations: The new President will represent the Union at the Heads of State/Government level on common foreign policy (CFSP) issues. However, this could create confusion as well as a potential turf battle with the Commission President Barroso.

10. (U) Issue: Reducing the number of Commissioners

What's at stake: trimming the Commission in 2014 to nominees of two-thirds of member states chosen by equal rotation (currently, one Commissioner per country). Also up for discussion is a French proposal: should the EP select the Commissioners?

USEU prediction: This may be an area that could be traded off to the Poles in exchange for Warsaw's cooperation elsewhere.

11. (SBU) Issue: Additional co-decision rights for European Parliament(EP)

What's at stake: Power gain for the EP. A "tearing down" of the pillar system would increase the number of areas where decisions are made jointly with the EP from 50% of EU legislation to 95%. The EP also stands to gain even more power over the EU budget. (Nevertheless, the EP's role in CFSP will remain limited.)

USEU prediction: Although there remains opposition to completely tearing down the pillar system, under any scenario except a complete failure to agree on any reforms, it looks like the EP will win big.

Implications for U.S.-EU relations: A power gain by the EP would lead us to increase our lobbying efforts there. Left-center MEPs have shown a knack for using the Parliament as a public forum for criticizing the United States. Nevertheless, there are a number of Members (including the bulk of the EP's largest, center-right, party) who are favorable to our positions on many issues.

112. (U) Issue: giving national parliaments a voice in EU decisions

What's at stake: the Dutch are pressing for national parliaments to have the right to send warnings to the EU institutions if they think the EU is acting beyond its competencies. A tougher version would give the national parliaments the ability to actually force the Commission to propose laws in specific areas or even veto EU legislation.

USEU prediction: Increasing national parliaments' powers will be a sweetener for the Netherlands and UK, who need to show their constituents that this reform is really different from the constitution. Some version of this (though likely the weaker one) will make it in.

Implications for the U.S.: This could mean broadening our lobbying efforts on EU issues to more consciously include member state parliaments as well.

113. (SBU) Issue: The future of the Common Foreign and Security Policy (CFSP)

What's at stake: Unlike pillar one issues, decision-making on foreign and security policy (CFSP) has always been consensus-based, on the basis that foreign policy is a member state rather than a joint community prerogative. Although the voting process won't change under the reform proposals, the ideological foundation just might: the reforms would move CFSP out of its current isolation and unite it with all "policy" decision-making in the "Treaty of the Community". Potentially, this would set the stage for a later shift to majority voting on CFSP issues and is seen by proponents as giving a strong political boost to the common foreign policy.

USEU prediction: Not a done deal, as national governments will be loath to give up any control of CFSP. Likely to be strong pushback from some member states.

Implications for the U.S.: Tough to assess. Member states are already using Brussels as a platform to coordinate foreign policy -- this shift will likely merely formalize that. The important point here is that it is not enough to focus on the EU-3 or the big five. Minority member states can help block a policy we don't like (or vice versa).

114. (SBU) Issue: single legal personality

BRUSSELS 00002001 004 OF 004

What's at stake: how the EU is represented in international organizations.

Implications for U.S.-EU relations: The "additionality"

question. By conferring on the Union an explicit legal personality that would absorb that of the European Community, a new treaty would make the EU a fully recognized subject of international law. This may enhance transparency and efficiency. More importantly it will certainly be used by the EU institutions -- if not necessarily the member states -- to push for additional EU representation in international organizations.

¶15. (U) Issue: symbols of the constitutional treaty (European flag, anthem, the word "constitution")

What's at stake: nothing of substance, but for the true believers in a future federal Europe, the symbols were an essential signpost of Europe's ambitions.

USEU prediction: EU Foreign Ministers already agreed June 17 to drop the term "constitution" as well as the flag and anthem from the text of any new treaty.

The Road Ahead

¶16. (SBU) Comment: While nobody thinks member states can reach decisions on all of these issues at the June 21-22 European Council, insiders hope that the key political choices will be made, with only four or five of the less-contentious issues left to be resolved by a largely "technical" IGC. Senior Portuguese reps here seemed to be thinking in these terms when they told us that they did not expect the IGC to "monopolize" their time. If this scenario holds, the Portuguese could formally open the IGC at the July 24 General Affairs Council, table "summer reading" documents there, begin substantive work in September, and conclude by Christmas. Scenario two (a deal full of hedges and holes) would certainly disrupt this optimistic timeframe. Scenario three (no deal) is a nightmare no one here wishes to contemplate (though all agree that it will not stop the EU machinery from functioning).

After the IGC: avoiding the referendum trap

¶17. (SBU) The member states have carefully limited the present agreement's exposure to public referendum by deciding that these reforms will only be "amendments" to the existing treaties, rather than new ones (as were the treaties of Nice and Amsterdam). Nevertheless, the EU and member state governments will still have to sell any changes to the European public -- partially in order to avoid further calls for public referenda. A Financial Times/Harris Poll published June 18 showed the majority of Spaniards, Germans, Brits, Italians, and French "consider the post-constitution treaty important enough to warrant a referendum". Gordon Brown in particular may come under pressure from British conservatives to call for a referendum. Our contacts say that the leaders will want to focus their public message on the EU's ability to deliver more and better services. Specific areas they will cite for "increased delivery" are climate change/energy, judicial and law enforcement, and external relations. End Comment.

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